

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (“Agreement”) is entered into between the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (“OIG-HHS”) of the Department of Health and Human Services (“HHS”)(collectively the “United States”) and Central Montgomery Medical Center and its manager, UHS of Delaware, Inc. (“CMMC”)(hereafter referred to as “the Parties”), through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

- A. CMMC is an acute care facility located at 100 Medical Campus Drive, Lansdale, PA.
- B. The United States contends that CMMC submitted or caused to be submitted claims for payment to the Medicare Program (“Medicare”), Title XVIII of the Social Security Act, 42 U.S.C. §§1395-1395ggg, and/or the Medical Assistance Program (“Medicaid”), Title XIX of the Social Security Act, Title 42 U.S.C. §§1396-1396v.
- C. The United States contends that it has certain civil monetary claims against CMMC under the False Claims Act, other federal statutes and/or common law doctrines, for engaging in the following conduct: during the period from February, 2002 through October, 2002, for the patients set forth in the subpoena dated October 16, 2002, the allegations contained in the Pennsylvania Department of Health and CMS surveys and orders dated February 13, 2002, August 28, 2002 and November 6, 2002 (that are incorporated herein by reference) relating to the alleged improper ordering and use of physical and chemical restraints, and the submission and/or causing the submission of claims for reimbursement to Federal health care programs in connection therewith (hereinafter referred to as the “Covered Conduct”).

D. CMMC denies the allegations regarding inadequate services and contends that the government does not have any claims against CMMC based upon the Covered Conduct allegations in Paragraph C under the statutes asserted in Paragraph B and paragraphs 7 and 8 of this Agreement. CMMC contends that its conduct was at all times lawful and its use of physical and/or chemical restraints was at all times appropriate. CMMC further contends that the Covered Conduct occurred during a transitional period following the sale of North Penn Hospital, and after which CMMC implemented additional policies and procedures designed to promote appropriate ordering and use of physical and chemical restraints.

E. This Agreement is neither an admission of liability by CMMC nor a concession by the United States that its claims are not well founded.

F. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. CMMC agrees to pay to the United States the sum of Two Hundred Thousand Dollars (\$200,000) (the "Settlement Amount"). CMMC agrees to make payment of the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney.

2. In September 2002, CMMC revised its restraint policies and procedures. Since that time, CMMC represents that it has drastically reduced the use of physical and chemical

restraints, and now offers multiple less restrictive alternatives to the use of physical and chemical restraints.

3. CMMC agrees to employ an independent third-party Consultant, to assist in and assess CMMC's compliance with the terms of this Settlement Agreement, that is, the proper ordering and use of chemical and/or physical restraints. The Parties agree that Ruth Mooney, PhD., shall be the Consultant. If the Consultant resigns or is removed for any reason by the United States prior to the termination of his or her term of appointment, the United States, after consultation with CMMC, shall appoint another consultant with the same functions and authorities. The Consultant shall visit CMMC for a period of at least one (1) year from the first monitoring visit and shall have access, at any time, to all current patients, their medical records, staff and employees, and all records in the possession or control of CMMC staff and employees (e.g., quality assurance records) relating to physical and/or chemical restraints. In addition, the Consultant shall advise management and staff as to possible procedures, which, in the Consultant's view, may facilitate compliance with this Settlement Agreement and federal laws and regulations governing restraints. The Consultant may confer and correspond with the parties on an ex parte basis.

4. The parties acknowledge that the Consultant will submit an acceptable budget at an hourly rate of \$75 (to the United States and CMMC) for a one (1) year consulting period. The United States and CMMC agree that the total annual consulting fee for the Consultant shall not exceed \$20,000 without prior approval of the parties. The Consultant may retain independent consultants, as needed, to meet his or her obligations, provided that the Consultant does not exceed the proposed annual budget without prior approval of the parties and that such independent consultants are approved by the United States after consultation with CMMC.

CMMC shall bear all reasonable costs of the Consultant consistent with an hourly rate, not to exceed the budget limits set forth above. Failure to pay the Consultant within thirty (30) calendar days of submission of their invoice shall constitute a breach of this Settlement Agreement subject to paragraph 11, provided, however, that CMMC shall advise the consultant of any apparent errors or contested items in the invoice within ten (10) days of receiving the invoice. In the event of a good faith disagreement that is not resolved within this time frame, CMMC shall pay all uncontested amounts within thirty (30) days of its receipt of the invoice.

5. The Consultant shall visit CMMC as he or she deems appropriate. At all times the Consultant shall attempt to coordinate his or her activities with relevant CMMC personnel in order to minimize disruption in the day-to-day operations of the hospital. At the conclusion of each visit, the Consultant will meet with CMMC's CEO (or designee) to discuss any observations and recommendations that have been identified and make suggestions related to how CMMC can address these observations and recommendations. The Consultant shall create a report (the "Consultant's Report") documenting any observations and recommendations relating to compliance with this Settlement Agreement and shall present the report within ten (10) calendar days of the site visit to CMMC and the United States Attorney's Office. Upon receipt of the Consultant's Report, CMMC will have an opportunity to submit a response, with the assistance of the Consultant, as requested, to address any concerns raised by the Consultant and actions taken by CMMC in response to such concerns. Such response, if any, shall be submitted within ten (10) business days of receipt by CMMC of the Consultant's Report. CMMC and the United States agree that, at the request of either party, they shall meet promptly to discuss any issues or concerns raised by the Consultant. CMMC is not bound by the Consultant's observations and recommendations but must address them in good faith. Nothing in this

Settlement Agreement shall prevent the United States or CMMC from calling the Consultant as a witness or from submitting the Consultant's written observations and recommendations in any proceeding. In the event that either party wishes to call the Consultant as a witness in any proceeding, that party will compensate the Consultant for his or her appearance to the extent appropriate and authorized by law.

6. If, after one (1) year from the effective date of the first visit and in the reasonable judgment of the United States, CMMC has implemented all provisions contained in this Settlement Agreement and there are no unresolved issues that have a material impact on restraint usage for the patients of CMMC, the consulting project shall terminate. If the Consultant recommends that the consulting project should be extended beyond the one-year term, the Consultant shall state the basis for such recommendation and the reasons and circumstances for the proposed extension, as well as any proposal they may have for the duration and nature of the proposed extension and a reasonable budget for their services during the proposed extension. Such proposed extension must be reasonable under the circumstances as determined by the parties and CMMC shall continue to compensate the Consultant at the same hourly rate as stated above and at the same annual cap as stated above.

7. Subject to the exceptions in Paragraph 9 below, in consideration of the obligations of CMMC set forth in this Agreement, conditioned upon CMMC's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release CMMC together with its current and former parent corporations and subsidiaries, the predecessors, successors and assigns of any of them, current and former officers and directors, and current employees from any civil or administrative monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§3729-3733; the Civil

Monetary Penalties Law, 42 U.S.C. §1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§3801-3812; or the common law theories of payment by mistake, unjust enrichment, breach of contract and fraud, for the Covered Conduct.

8. In consideration of the obligations of CMMC set forth in this Agreement, conditioned upon CMMC's payment in full of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative action seeking exclusion from the Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. §1320a-7b(f)) against CMMC, together with its current and former parent corporations, and the successors and assigns of any of them under 42 U.S.C. §1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. §1320a-7(b)(7)(permissive exclusion for fraud, kickbacks, and other prohibited activities), for the Covered Conduct, except as reserved in Paragraph 9, below and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude CMMC from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. §1320a-7(a)(mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 9, below.

9. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person are any and all of the following:

- a. Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;

c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;

d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

e. Any claims based upon such obligations as are created by this Agreement.;

f. Any civil or administrative liability of individuals (including current or former directors, officers, employees, agents, or shareholders of CMMC) who receive written notification that they are the targets of a criminal investigation (as defined in the United States Attorneys' Manual), are indicted, charged, or convicted, or who enter into a plea agreement related to the Covered Conduct.

10. UHS of Delaware, Inc., the management company of CMMC, certifies it has implemented and promises to maintain its existing Corporate Compliance Program that, for and on behalf of CMMC, incorporates the policies and principles set forth in HHS-OIG's Compliance Program Guidance for Hospitals and Supplemental Compliance Program Guidance for Hospitals.

11. In the event that CMMC fails to comply in good faith with any of the terms of this Settlement Agreement relating to it, or should any of CMMC's representations or warrants be materially false, the United States may, at its sole discretion, exercise one or more of the following rights:

a. seek specific performance of this Settlement Agreement and the prevailing party shall be entitled to an award of reasonable attorneys fees and costs in its favor; or

b. exercise any other right granted by law.

12. In the event that the United States exercises any of its rights under paragraph 11 of this Settlement Agreement, CMMC specifically reserves all of its rights to challenge, defend and contest any such action.

13. CMMC waives and will not assert any defenses CMMC may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Settlement bars a remedy sought in such criminal prosecution or administrative action. CMMC agrees that this settlement is not punitive in purpose or effect. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

14. CMMC fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which CMMC has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

15. The Amount that CMMC must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph 1 above, will not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary or any State payer, related to the Covered Conduct; and CMMC agrees not to resubmit to any Medicare carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

16. CMMC agrees to the following:

a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulations (FAR), 48 C.F.R. §31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf on CMMC, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (i) the Covered Conduct,
- (ii) the United States' audit(s) and civil investigations(s) of the Covered Conduct,
- (iii) CMMC's investigation, defense, and any corrective actions undertaken in direct response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees),
- (iv) the negotiation and performance of this Agreement,
- (v) the payment CMMC makes to the United States pursuant to this Agreement, and
- (vi) the third party consultant costs incurred pursuant to paragraph 4 of this Agreement, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP). However, nothing in this sub-paragraph that may apply to compliance costs affects the status of costs that are not allowable based on any other authority applicable to CMMC. All costs otherwise described or set forth in this paragraph 16 are hereafter, "unallowable costs".

b. Future Treatment of Unallowable Costs: These unallowable costs will be separately estimated and accounted for by CMMC, and CMMC will not charge such unallowable costs directly or indirectly to any contracts with the United States or any State Medicaid Program, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by CMMC or any of its subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: CMMC further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by CMMC or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. CMMC agrees that the United States, at a minimum, shall be entitled to recoup from CMMC any overpayment plus applicable interest and penalties as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by CMMC or any of its subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this

Paragraph) on CMMC or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine CMMC's books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

17. This Agreement is intended to be for the benefit of the Parties, only, and by this instrument the Parties do not release any claims against any other person or entity.

18. CMMC agrees that it will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. CMMC waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

19. CMMC expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §547(b)(3), and will remain solvent following its payment to the United States hereunder. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to CMMC, within the meaning of 11 U.S.C. §547(c)(1), and (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

20. Each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

21. CMMC represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

22. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the Eastern District of Pennsylvania.

23. This Agreement may not be amended except by written consent of the Parties.

24. The undersigned individuals signing this Agreement on behalf of CMMC represent and warrant that they are authorized by CMMC to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

25. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

26. This Agreement is effective on the date of signature of the last signatory to the Agreement.

THE UNITED STATES OF AMERICA

PATRICK L. MEEHAN
United States Attorney
Eastern District of Pennsylvania

Dated: _____

By: _____
James G. Sheehan
Associate United States Attorney

Dated: _____

By: _____
David R. Hoffman
Assistant United States Attorney

Dated: _____

By: _____
Lewis Morris
Chief Counsel
Office of Inspector General
United States Department of
Health and Human Services

CENTRAL MONTGOMERY MEDICAL
CENTER AND UHS OF DELAWARE, INC.

Dated: _____

By: _____
Marc D. Miller

Dated: _____

By: _____
Thomas H. Suddath, Jr., Esquire
Montgomery, McCracken,
Walker & Rhoads, LLP